
Appeal Decision

Site visit made on 10 October 2019

by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2020

Appeal Ref: APP/N5090/W/19/3234012

Land adjacent to 2 Birley Road, Whetstone, London N20 0E2

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms. C. Radia against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/2631/S73, dated 8 May 2019, was refused by notice dated 3 July 2019.
 - The application sought planning permission for the erection of a part single, part two storey detached single family dwelling plus basement, with associated amenity space, refuse storage, cycle store and off-street car parking without complying with a condition attached to planning permission Ref 17/7812/FUL, dated 17 January 2018.
 - The condition in dispute is No. 1 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Block and Site Plan Drawing No. 1549-PL-02; Comparison Drawing – Drawing No. 1549-PL-05; Proposed Elevations and Details of Materials Drawing No. 1649-PL-06 Received 11 December 2017; Proposed Street Elevation and Perspective Streetscape Drawing No. 1549-PL-04 Rev A; Proposed Plans and Elevation Drawing No. 1549-PL-03 Rev A Received 22 December 2017.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the plans as assessed in accordance with policies CS NPPF and CS1 of the Local Plan Core Strategy DPD (adopted September 2012) and policy DM01 of the Local Plan Development Management Policies DPD (adopted September 2012).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a part single, part two-storey detached single family dwelling plus basement, with associated amenity space, refuse storage, cycle store and off-street car parking in accordance with application Ref 19/2631/S73 without compliance with condition number 1 previously imposed on planning permission 17/7812/FUL dated 17 January 2018 and subject to the conditions in the attached schedule.

Main Issue

2. The main issue is whether the condition is reasonable and necessary to protect the living conditions of residents at nos.31 and 33 Totteridge Lane with particular regard to outlook.

Reasons

3. The site subject to this appeal is located within an established residential area close to where Birley Road joins Totteridge Lane. Planning permission for the construction of a dwelling on the site was granted in 2018. The appellant is seeking to extend the first-floor bedroom to the rear above the ground-floor bedroom. According to the Appellant's statement the extension would measure 2.3 metres by 2.8 metres and would be stepped back from the side elevation of the currently approved scheme by 1.4 metres. The extension would accommodate an en suite bathroom and would not incorporate any windows. The effect of the proposed extension would be to reduce the gap at first floor level between it and the rear elevations of Nos. 29, 31 and 33 which are located to the side of the appeal property.
4. There is a solid wooden fence located along the side boundary of the appeal property which extends to about 2 metres in height. This would provide an element of screening between the ground floor windows at the rear of the properties along Totteridge Lane and the proposed extension. It would not, however, offer any mitigation to views from the first-floor windows of these properties.
5. Under the provision of the scheme granted planning permission in 2017 occupants looking from the ground and first-floor windows of the relevant properties located along Totteridge Lane will have a view across the rear of the appeal dwelling to the side of No. 2 Birley Road. The effect of the proposed extension subject to this appeal would be to partially eliminate that view, introducing a view of a blank flank wall at closer quarters instead. According to the Council, the distance of separation between the proposed extension and both the boundary fence and windows of the Totteridge Lane properties would be less than advised in its own residential design guidelines.
6. I agree with the Appellant who contends that the minimum distances advised in the Council's guidelines refer to privacy rather than outlook. Since the proposed extension will not incorporate any windows, I find that there would be no loss of privacy to the current and future occupants of the Totteridge Lane properties.
7. However, there will be some loss of outlook from the Totteridge Lane properties and I acknowledge that the guidelines address this concern also, albeit without reference to specific distances. Nevertheless, because of the modest scale of the proposed extension, I do not consider that the loss of outlook for occupants of the Totteridge Lane properties would be significant. Further, I note that the Council accepts that there will be no loss of sunlight or daylight caused by the proposed scheme. I see no reason to dispute this assessment.
8. For the reasons set out above I find that the proposed variation in the condition to planning permission 17/7812/FUL would be compliant with Policy C5 of Barnet's Local Plan (Core Strategy) Development Plan Document 2012, with Policy DM01 of Barnet's Local Plan (Development Management Policies) Development Plan Document 2012 and with the Local Plan: Supplementary Planning Document: Residential Design Guidance 2016.

Other Matters

9. I note that one objector residing in the neighbouring property at 2 Birley Road on the other side of the appeal site expressed concerns about the increase in the height of the proposed dwelling. The proposed first floor extension would increase the height of the building by 1-storey for a relatively short part of the rear section of the dwelling. I note that there are two side windows on the first-floor of No.2 Birley Road although I am unaware as to whether they are into habitable rooms. Nevertheless, because of the reasonable separation between the two properties across a public right of way and the modest scale of the proposed extension I do not believe that there would be any significant impact on the living conditions of the current and future occupants of this neighbouring property.

Conclusion and Conditions

10. For the reasons set out above I conclude that the appeal should succeed, and I shall grant a new planning permission without the disputed condition.
11. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
12. The original Condition no. 1 is deleted and replaced by 'The development hereby permitted shall be carried out in accordance with Proposed Plans and Elevation Drawing No. 1549-PL-03 Revision D'.

William Walton

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with Proposed Plans and Elevation Drawing No. 1549-PL-03 Revision D.
2. The development shall be begun before the expiration of three years from the date of the Planning Permission ref. 17/7812/FUL being 16 January 2021.
3.
 - a) No development other than demolition works shall take place until details of the materials to be used for the external surfaces of the building(s) and hard surfaced areas hereby approved have been submitted to and approved in writing by the Local Planning Authority.
 - b) The development shall thereafter be implemented in accordance with the materials as approved under this condition.
4. The roof of the extension hereby permitted shall only be used in connection with the repair and maintenance of the building and shall at no time be

- converted to or used as a balcony, roof garden or similar amenity or sitting out area.
5. Prior to occupation of the development, parking spaces and the access to the car parking spaces from public highway shall be provided in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. Thereafter, the parking spaces shall be used only as agreed and not to be used for any purpose other than the parking and turning of vehicles in connection with approved development.
 6.
 - a) Before the development hereby permitted is first occupied, details of enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection shall be submitted to and approved in writing by the Local Planning Authority.
 - b) The development shall be implemented in full accordance with the details as approved under this condition prior to the first occupation and retained as such thereafter.
 7.
 - a) Before the development hereby permitted is first occupied, details of enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection shall be submitted to and approved in writing by the Local Planning Authority.
 - b) The development shall be implemented in full accordance with the details as approved under this condition prior to the first occupation and retained as such thereafter.
 8. No site works or works on this development including demolition or construction work shall commence until a Demolition and Construction Management and Logistics Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in full accordance with the details approved under this plan. The Demolition and Construction Management and Logistics Plan submitted shall include, but not be limited to, the following information:
 - i. details of the routing of construction vehicles to the site, hours of access, access and egress arrangements within the site and security procedures;
 - ii. site preparation and construction stages of the development;
 - iii. details of provisions for recycling of materials, the provision on site of a storage/delivery area for all plant, site huts, site facilities and materials;
 - iv. details showing how all vehicles associated with the construction works are properly washed and cleaned to prevent the passage to mud and dirt onto the adjoining highway;
 - v. the methods to be used and the measures to be undertaken to control the emission of dust, noise and vibration arising from construction works;

- vi. a suitable and efficient means of suppressing dust, including the adequate containment of stored or accumulated material so as to prevent it becoming airborne at any time and giving rise to nuisance;
 - vii. noise mitigation measures for all plant and processors;
 - viii. details of contractor's compound and car parking arrangements;
 - ix. details of interim car parking management arrangements for the duration of construction;
 - x. details of a community liaison contact for the duration of all works associated with the development.
9. No construction work resulting from the planning permission shall be carried out on the premises at any time on Sundays, Bank or Public Holidays, before 8.00 am or after 1.00 pm on Saturdays, or before 8.00 am or after 6.00pm pm on other days.
10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development otherwise permitted by any of Classes A,B,C,D,E and F of Part 1 of Schedule 2 of that Order shall be carried out within the area shown on the Location Plan hereby approved.
11. Notwithstanding the details shown in the drawings submitted and otherwise hereby approved, prior to the first occupation of the new dwellinghouse(s) (Use Class C3) permitted under this consent they shall all have been constructed to meet and achieve all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010 (or the equivalent standard in such measure of accessibility and adaptability for house design which may replace that scheme in future). The development shall be maintained as such in perpetuity thereafter.
12. a) No development other than demolition works shall take place until details of the green roof, including the materials and species to be used and a management scheme have been submitted to and approved in writing by the Local Planning Authority.
- b) The development shall thereafter be implemented in accordance with the details as approved under this condition.
13. a) A scheme of hard and soft landscaping, including details of existing trees to be retained and size, species, planting heights, densities and positions of any soft landscaping, shall be submitted to and agreed in writing by the Local Planning Authority before the development hereby permitted is commenced.
- b) All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner, or commencement of the use.
- c) Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.

14. Prior to the first occupation of the new dwellinghouse(s) (Use Class C3) hereby approved they shall all have been constructed to have 100% of the water supplied to them by the mains water infrastructure provided through a water meter or water meters and each new dwelling shall be constructed to include water saving and efficiency measures that comply with Regulation 36(2)(b) of Part G 2 of the Building Regulations to ensure that a maximum of 105 litres of water is consumed per person per day with a fittings based approach should be used to determine the water consumption of the proposed development. The development shall be maintained as such in perpetuity thereafter.
15. Before the building hereby permitted is first occupied the proposed window(s) in the side elevation facing Totteridge Lane shall be glazed with obscure glass only and shall be permanently retained as such thereafter and shall be permanently fixed shut with only a fanlight opening.
16. a) No development shall take place until the implementation of a programme of archaeological evaluation has been secured in accordance with a written scheme which has been submitted by the applicant and approved by the Local Planning Authority in writing and a report on that evaluation has been submitted to the Local Planning Authority.

b) If heritage assets of archaeological interest are identified by the evaluation under a) above, then before development (other than demolition to present ground level) commences the implementation of a programme of archaeological investigation shall be secured in accordance with a Written Scheme of Investigation which has been submitted by the applicant and approved by the local planning authority in writing.

c) No development or demolition shall take place other than in accordance with the Written Scheme of Investigation approved under b).

d) The development shall not be first occupied or brought into use until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under b), and the provision for analysis, publication and dissemination of the results and archive deposition has been secured.

